

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HITACHI DATA SYSTEMS
CORPORATION,
Plaintiff,
v.
THE RICHARDSON COMPANY,
Defendant.

Case No. 15-CV-00487-LHK

**CASE MANAGEMENT ORDER AND
ORDER DENYING PLAINTIFF LEAVE
TO AMEND TO ADD PROPOSED
AFFIRMATIVE DEFENSES**

Plaintiff's Attorneys: John Boudet, Shayne Thomas
Defendant's Attorney: Jared Matheson

A case management conference was held on September 23, 2015. A further case management conference is set for December 16, 2015, at 2:00 p.m. The parties shall file their joint case management statement by December 9, 2015.

At the initial case management conference, the Court, with the approval of the parties, set July 15, 2015 as the deadline to file a motion to amend pleadings or add parties. That deadline passed more than two months ago. At the initial case management conference, the Court, with the approval of the parties, also set a January 28, 2016 fact discovery cutoff date.

In the September 16, 2015 Joint Case Management Conference, Plaintiff Hitachi Data Systems Corporation ("Plaintiff" or "HDS") stated: "In the event mediation is unsuccessful, HDS anticipates filing a motion to amend its affirmative defenses. The motion would be filed no later than September 29, 2015." The parties' September 21, 2015 mediation was unsuccessful.

At the September 23, 2015 Case Management Conference, Plaintiff identified for the first time that it wanted to add an affirmative defense “that damages must be reasonable for counterclaims” and an affirmative defense of “unconscionability.” Plaintiff had never previously disclosed, discussed or provided a copy of these proposed affirmative defenses to Defendant. At the September 23, 2015 Case Management Conference, Plaintiff conceded that these proposed affirmative defenses may not in fact be affirmative defenses. Plaintiff also conceded that Plaintiff’s proposed affirmative defenses did not depend on issues of fact or law that were unknown to Plaintiff prior to July 15, 2015.

Generally, leave to amend shall be denied only if allowing amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). In the instant case, the Court finds that Plaintiff has not demonstrated due diligence with respect to these two proposed affirmative defenses and has caused undue delay in failing to timely move to amend. Moreover, the Court finds that the filing of a motion to amend affirmative defenses on September 29, 2015 will not give the parties sufficient time to brief the motion, have the motion heard and decided, and complete any discovery on these proposed affirmative defenses, if they in fact are affirmative defenses, before the January 28, 2016 fact discovery cutoff date. Thus, allowing Plaintiff to file a motion to amend two and a half months after the deadline would unduly prejudice Defendant. In addition, amendment may be futile; even Plaintiff itself concedes that its proposed affirmative defenses may not in fact constitute affirmative defenses. In light of all of these circumstances, the Court denies Plaintiff leave to amend to add its two proposed affirmative defenses. *See Filtral Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972) (“A district court has inherent power to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants.”).

Thus far, Plaintiff has not provided a proposed protective order to Defendant. Plaintiff shall serve Defendant a copy of a proposed protective order by September 23, 2015. Defendant shall respond to the proposed protective order by September 28, 2015. The parties shall file a stipulated protective order for Magistrate Judge Grewal’s signature by October 2, 2015.

The case schedule remains as previously set. For the convenience of the parties, the schedule is repeated below:

| Scheduled Event | Date |
|---|--------------------|
| Deadline to complete ADR | September 30, 2015 |
| Fact discovery cutoff | January 28, 2016 |
| Opening expert reports | February 25, 2016 |
| Rebuttal expert reports | March 10, 2016 |
| Close of expert discovery | March 24, 2016 |
| Last day to file dispositive motions (one per side in entire case) | April 7, 2016 |

| | | |
|---|--------------------------------|------------------------------|
| 1 | Hearing on dispositive motions | May 19, 2016, at 1:30 p.m. |
| 2 | Final Pretrial conference | July 21, 2016, at 1:30 p.m. |
| 3 | Jury Trial | August 8, 2016, at 9:00 a.m. |
| 4 | Length of Trial | 5 days |

5 **IT IS SO ORDERED.**

7 Dated: September 23, 2015

Lucy H. Koh

8
9 LUCY H. KOH
United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27